

Alabama Department of Environmental Management
2021 Triennial Review of Water Quality Standards
Response to Comments
Public Hearing August 19, 2021
Public Comment Period July 2, 2021, through August 19, 2021

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Response to Comments

335-6-10-.07 TOXIC POLLUTANT CRITERIA APPLICABLE TO STATE WATERS

1. Several commenters suggest water quality criteria for the protection of human health be updated to reflect EPA's recommended toxic pollutant criteria.

Response: National Recommended Water Quality Criteria published by EPA pursuant to §304(a) of the Clean Water Act (CWA) provide guidance for states and tribes to use to establish water quality standards and are strictly recommendations. EPA's recommended criteria do not impose legally binding requirements, and states and authorized tribes have the discretion to adopt, where appropriate, other scientifically defensible water quality criteria that differ from these recommendations.

The Department is making every effort to review and consider EPA's updated national 304(a) criteria recommendations for both human health and aquatic life during the current triennial review period. With respect to adoption of EPA's recommendations, Alabama can (1) adopt the criteria as recommended, (2) propose alternative criteria based on its own scientifically valid research, or (3) propose leaving criteria as they are, again with proper scientific justification. Whichever option is chosen must ultimately be approved by EPA.

Based on a recent survey conducted by the Department, none of the eight states in Region 4 have adopted EPA's recommendations for the human health criteria and only a few states nationwide have adopted some form of EPA's recommendations; therefore, it is apparent that Alabama is not "lagging far behind" in its efforts to adopt/revise criteria.

The Department will continue to review and evaluate all data and information and collaborate with EPA and other stakeholders pertaining to the development of national recommended human health and aquatic life criteria during its 2021-2023 triennial review period.

2. Several commenters suggest revision of current arsenic human health criteria. These commenters suggest a human health criteria of 3.5 µg/L for the consumption of fish only and a human health criteria of 2.2 µg/L for the consumption of water and fish.

Response: The Department will review and evaluate all data and information and collaborate with EPA and other stakeholders pertaining to the development of arsenic criteria during its 2021-2023 triennial review period.

335-6-10-.09 SPECIFIC WATER QUALITY CRITERIA

3. One commenter suggests revision of water quality standards to include a state minimum water temperature.

Response: As part of the triennial review process, the Department will take the request for a minimum temperature criteria under consideration to include relevant past, present, and future physical, chemical and biological surveys.

4. Several commenters suggest that the 4.0 mg/L minimum dissolved oxygen criteria for existing hydroelectric generating facilities be revised.

Response: The Department is compiling and evaluating all readily available data and information with respect to dissolved oxygen levels below existing hydropower facilities in Alabama. Upon completion of the analysis, the Department will determine if revisions to the existing dissolved oxygen criteria are warranted or if additional studies and analyses need to be conducted.

With respect to the existing dissolved oxygen criteria for discharges from existing hydroelectric generation impoundments, the Department will also consider adding language to clarify the existing regulations.

5. Several commenters suggest more stringent water quality criteria for turbidity levels to be protective of designated use classifications, public health, and aquatic life.

Response: As part of ADEM's ongoing siltation research, the Department has been collecting extensive continuous "real-time" flow, turbidity and total suspended solids (TSS) data within various ecoregions of the State. The goal of the research will be to improve various aspects of our water quality monitoring and protections programs. Currently, the Department is expanding its efforts by installing more flow/water quality monitoring stations throughout the state to collect additional data that will support future criteria for turbidity.

6. One commenter suggests a monthly turbidity average of no more than 25 NTU for waterbodies in the Choctawhatchee River basin.

Response: See response to comment 5.

7. Several commenters suggest that the incidental contact season be extended to provide proper bacteria standards and to reflect that incidental contact occurs year-round in Alabama.

Response: In addition to the Swimming and Other Whole Body Water-Contact Sports use classification, the Department's current water quality standards are protective of incidental water contact and recreation (i.e. swimming) for the fishable/swimmable use classifications, namely, Outstanding Alabama Water, Public Water Supply, Shellfish Harvesting, and Fish and Wildlife. Currently, it is recognized that these waters may be used for incidental water contact year-round and for whole body water-contact recreation during the months of May through October and are considered protective of the swimming and recreation that may occur.

335-6-10-.09(3) SWIMMING AND OTHER WHOLE BODY WATER-CONTACT SPORTS

8. Several commenters suggest a “Swimming and Other Whole Body Water-Contact Sports” use classification for waterbodies where swimming and other recreational activities are regularly occurring. These commenters also suggest removal of footnote regarding swimming near wastewater outfalls from Ala. Admin. Code r. 335-6-10-.09(1)(c)(3).

Response: The prohibition on assignment of the Swimming and Other Whole Body Water-Contact Sports use classification within the vicinity of treated wastewater discharges is included in the ADEM regulations at the request of the Alabama Department of Public Health to provide for a reduced risk of illness and for the protection of public health. The provision recognizes that no treatment system is completely fail-safe and that instantaneous notification of the public when a failure is detected is impractical. The note further serves to inform the public of the increased risk they may incur when swimming in the immediate vicinity of treated wastewater sources.

Effective February 3, 2017, the Department revised the bacteriological criteria for several use classifications by extending the recreational season and revising the single sample maximum criterion for freshwater. In doing so, the Department considers the Fish and Wildlife (F&W) use classification provides adequate protection for water recreation (i.e. swimming and other whole body water-contact activities) during the months of May through October.

Simply because swimming is observed in a particular waterbody classified as F&W does not necessitate that the Swimming and Other Whole Body Water-Contact Sports (S) classification should be added to the subject waterbody. Both classifications are considered protective of incidental contact recreation (i.e. wading, paddling) year-round and whole body water-contact recreation (i.e. swimming) during the months of May through October. Therefore, the Department will continue to be judicious in assigning the Swimming classification to existing F&W classified waters, unless it can be demonstrated that such waters are being utilized in a manner consistent with the Swimming and Other Whole Body Water-Contact Sports (S) classification.

335-6-10-.09(5) FISH AND WILDLIFE

9. One commenter suggests E. coli criterion for “Fish and Wildlife” use classification be made more stringent to protect recreational uses. Also, the commenter suggests the elimination of the differentiation of an incidental contact season to reflect swimming and recreation that occurs in “Swimming and Other Whole Body Water-Contact Sports” and “Fish and Wildlife” classified waterbodies throughout the year.

Response: Effective February 3, 2017, the Department revised the bacteriological criteria for several use classifications by extending the recreational season and revising the single sample maximum criterion for freshwater. In doing so, the Department considers the Fish and Wildlife (F&W) use classification provides adequate protection for water recreation (i.e. swimming and other whole body water-contact activities) during the months of May through October.

Simply because swimming is observed in a particular waterbody classified as F&W does not necessitate that the Swimming and Other Whole Body Water-Contact Sports (S) classification should be added to the subject waterbody. Both classifications are considered protective of incidental contact recreation (i.e. wading, paddling) year-round and whole body water-contact recreation (i.e. swimming) during the months of May through October. Therefore, the Department will continue to be judicious in assigning the Swimming classification to existing F&W classified waters, unless it can be demonstrated that such waters are being utilized in a manner consistent with the Swimming and Other Whole Body Water-Contact Sports (S) classification.

335-6-10-.09 WATERBODIES LESS THAN “FISHABLE/SWIMMABLE”

- 10.** One commenter suggests that “Agricultural and Industrial Water Supply” and “Limited Warmwater Fishery” use classifications be eliminated so that all Alabama waters attain the “fishable/swimmable” goal of the Clean Water Act.

Response:

It is not the Department's intent to downgrade waters from the Fish and Wildlife (F&W) use classification to the Limited Warmwater Fishery (LWF) or Agricultural and Industrial Water Supply (A&I) use classification and, to date, this has not been done. However, federal regulations at 40 CFR §131.10(g) provide states a mechanism to assign use classifications to waterbodies that cannot attain the “fishable/swimmable” goal as defined under Section 101(a)(2) of the Clean Water Act. Pursuant to applicable federal laws, regulations and policy, ADEM has prepared a Use Attainability Analysis (UAA) for each and every waterbody in Alabama that has been assigned an LWF or A&I use classification and subsequently received EPA approval on those decisions.

One of the primary objectives of the Department is for all waterbodies in Alabama to meet the “fishable/swimmable” goal as defined under the CWA. The Department continues to monitor and evaluate all LWF and A&I waterbodies and, as new information becomes available demonstrating that a higher use is attainable, the Department intends to propose a change to ADEM Administrative Code r. 335-6-11-.02 assigning the higher use classification.

- 11.** One commenter suggests an updated Use Attainability Analysis for Village Creek and Valley Creek, water quality studies and wastewater treatment standard upgrades, and an upgrade of use classification for Valley Creek and Village Creek to “Fish and Wildlife.”

Response:

One of the primary objectives of the Department is for all waterbodies in Alabama to meet the “fishable/swimmable” goal as defined under the CWA. The Department continues to monitor and evaluate all LWF and A&I waterbodies and as new information becomes available demonstrating that a higher use is attainable, the Department intends to propose a change to ADEM Administrative Code r. 335-6-11-.02 assigning the higher use classification.

335-6-11-.02 USE CLASSIFICATIONS

12. Two commenters suggest that the entire-free-flowing portion of Locust Fork, Turkey Creek in Jefferson County, and Blackwater Creek in Winston and Walker counties be classified as “Outstanding Alabama Water.”

Response: Segments of Locust Fork are currently classified as “Public Water Supply”, “Swimming and Other Whole Body Water-contact Sports”, and “Fish and Wildlife” with "Swimming and Other Whole Body Water-Contact Sports" added to many segments of Locust Fork in 2012. Turkey Creek is currently classified as “Fish and Wildlife”. Additional data has been collected for both Locust Fork and Turkey Creek since the last Triennial Review so the Department will reevaluate the request to upgrade Locust Fork and Turkey Creek to the OAW use classification. As a part of this evaluation, the Department must consider whether the proposed use is currently being attained.

Blackwater Creek is currently classified as “Fish and Wildlife”. Additional data is required in order to proceed with evaluating Blackwater Creek as a candidate for the OAW use classification. As a part of this evaluation, water quality data collected within the past five years must be available for the requested waterbody, and the available data must indicate the waterbody is compliant with the OAW use classification.

13. One commenter suggests that North River and Clear Creek in Fayette and Tuscaloosa counties be classified as “Outstanding Alabama Water.”

Response: Additional data has been collected for both North River and Clear Creek since the last Triennial Review so the Department will reevaluate the request to upgrade North River and Clear Creek to the OAW use classification. As a part of this evaluation, the Department must consider whether the proposed use is currently being attained.

14. One commenter suggests that Coosa River, from Wetumpka to Jordan Dam, be classified as “Outstanding Alabama Water” for its exceptional recreational and ecological significance.

Response: Coosa River from Wetumpka to Jordan Dam is currently classified as “Swimming and Other Whole Body Water-Contact Sports” and “Fish and Wildlife”. The Department is currently reviewing the available data and information for this segment of the Coosa River and will evaluate the request to upgrade this water to the "Outstanding Alabama Water" use classification.

15. One commenter suggests “Swimming and Other Whole Body Water-Contact Sports” and “Outstanding Alabama Water” classifications be added to Little Cahaba River below Lake Purdy to ensure long-term protection of existing uses.

Response: Little Cahaba River, below Lake Purdy, is currently classified as “Public Water Supply.” Additional data is required in order to proceed with evaluating Little Cahaba River as a

candidate for the S and OAW use classifications. As a part of this evaluation, water quality data collected within the past five years must be available for the requested waterbody, and the available data must indicate the waterbody is compliant with the OAW use classification.

16. One commenter suggests a “Swimming and Other Whole Body Water-Contact Sports” classification be added to the following waterbodies:

Waterbody	From	To	Current Classification
Cahaba River	Little Cahaba River (Bibb County)	Shelby Co Road 52	OAW/F&W
Cahaba River	Dam near US Hwy 280	Grants Mill Road	OAW/PWS
Cahaba River	US Highway 11	Its source	OAW/F&W
Little Cahaba River (Bibb County)	Cahaba River	Its source	OAW/F&W

Response:

According to the conditions related to the best usage of waters designated the Outstanding Alabama Water use classification found at ADEM Administrative Code r. 335-6-10-.09(1)(b), "High quality waters that constitute an outstanding Alabama resource, such as waters of state parks and wildlife refuges, and waters of exceptional recreational or ecological significance, may be considered for classification as an Outstanding Alabama Water (OAW)." OAW is considered a high quality water and its criteria is protective of "whole body water-contact sports"; therefore, the addition of the "Swimming and Other Whole Body Water-Contact Sports" use classification is unnecessary.

17. Several commenters suggest all sections of the Locust Fork River be upgraded to a “Swimming and Other Whole Body Water-Contact Sports” classification.

Response: See response to comment 8.

18. One commenter suggests that Locust Fork River not be reclassified to “Swimming and Other Whole Body Water-Contact Sports.”

Response: Comment noted.

19. Several commenters suggest that Turkey Creek at Turkey Creek Nature Preserve be classified as “Swimming and Other Whole Body Water-Contact Sports.”

Response: See response to comment 8.

20. One commenter suggests a “Swimming and Other Whole Body Water-Contact Sports” classification be added to the following waterbodies:

Waterbody	From	To	Current Classification
Lost Creek	2m upstream of Wolf Creek	Cane Creek	PWS/F&W
Mulberry Fork	Burnt Cane Creek	Frog Ague Creek	PWS/F&W
Mulberry Fork	Frog Ague Creek	Mulberry/Sipsey junction	PWS/F&W
Sipsey Fork	Mulberry Fork	Lewis Smith Dam	PWS/F&W
Self Creek	Alabama Hwy 79	Its source	PWS
Calvert Prong	Calvert Prong dam/Hwy 31	Its source	PWS
Brindley Creek	Broglen River	Its source	PWS
Eightmile Creek	Lake Catoma Dam	Its source	PWS
Brushy Creek	Sipsey Fork (Smith Lake)	Hwy 278	PWS/F&W
Clear Creek	City of Haleyville	Its source	PWS
Curtis Mill Creek	Town of Double Springs	Its source	PWS
Mulberry Fork	Sipsey Fork	Its source	F&W
Big Prairie Creek	Black Warrior River above Demopolis Lock and Dam 6	Its source	F&W
Five Mile Creek	Black Warrior River	Payne Lake in Talladega National Forest	F&W
North River	Black Warrior River	Ellis Creek	F&W
Hurricane Creek	Warrior River	Its source	F&W
Davis Creek	Warrior River	Its source	F&W
Turkey Creek	Locust Fork	Its source	F&W
Self Creek	Gurley Creek	Hwy 79	F&W
Gurley Creek	Locust Fork	Its source	F&W
Calvert Prong	Blackburn Fork	Calvert Prong Dam	F&W
Blackburn Fork	Locust Fork	Inland Lake Dam	F&W
Graves Creek	Locust Fork	Its source	F&W
Slab Creek	Locust Fork	Its source	F&W
Burnt Cane Creek	Mulberry Fork	Its source	F&W
Locust Fork	Kelly Creek	Slab Creek	F&W

Response: See response to comment 8.

21. One commenter suggests a “Swimming and Other Whole Body Water-Contact Sports” classification be added to the following waterbodies:

Black Warrior River	Selden Lock and Dam	Oliver Lock and Dam	F&W
Fivemile Creek	Black Warrior River	Payne Lake Dam	F&W
North River	Binion Creek	Ellis Creek	F&W
Five Mile Creek	Old Jasper Hwy	Alabama Highway 79	F&W
Lost Creek	Mulberry Fork	2m upstream of Wolf Creek	F&W
Valley Creek	Black Warrior River	Blue Creek	F&W
Valley Creek	Blue Creek	Its source	LWF

Response: See response to comment 8.

22. One commenter suggests a “Swimming and Other Whole Body Water-Contact Sports” classification be added to the following waterbodies:

Waterbody	From	To	Current Classification
Cahaba River	Shelby Co Road 52	Caldwell Mill Rd (Shelby Co)*	F&W
Cahaba River	Grants Mill Road	US Highway 11	F&W
Shades Creek	Cahaba River	Its source	F&W
Buck Creek	Cahaba River	Highway 261*	F&W

*Suggested new segment boundary

Response: See response to comment 8.

23. One commenter suggests that West Fork Choctawhatchee River, from Big Creek to Judy Creek, be classified as “Swimming and Other Whole Body Water-Contact Sports.”

Response: See response to comment 8.

24. One commenter suggests that Choctawhatchee River, from Alabama Highway 12 to Brooking Mill Creek, be classified as “Swimming and Other Whole Body Water-Contact Sports.”

Response: See response to comment 8.

25. One commenter suggests the lower portion of Little Choctawhatchee River, from AL Highway 123 or County Road 9 to its mouth, be classified as “Swimming and Other Whole Body Water-Contact Sports.”

Response: See response to comment 8.

26. One commenter suggests the following waterbodies be upgraded to “Swimming and Other Whole Body Water-Contact Sports” classifications: Black Creek, Big Canoe Creek, Big Cove Creek, Coldwater Creek, and Little Canoe Creek.

Response: See response to comment 8.

27. Two commenters suggest that all three sections of Talladega Creek be upgraded to a “Swimming and Other Whole Body Water-Contact Sports” classification.

Response: See response to comment 8.

28. One commenter suggests that Halls Mill Creek, Chickasaw Creek, and the section of Mobile Bay labeled with index “10” in ADEM’s Water Use Classification Map be classified as “Swimming and Other Whole Body Water-Contact Sports.”

Response: See response to comment 8.

GENERAL: NPDES PERMITS

29. One commenter suggests that narrative water quality standards be made enforceable by incorporating them into Alabama NPDES permits.

Response: Enforcement of NPDES permits is outside the scope of the review of Alabama’s water quality standards regulations in ADEM Administrative Code r. 335-6-10 and 335-6- 11. The commenter’s concerns have been provided to the NPDES Permit Program for consideration.

GENERAL: NUTRIENT CRITERIA DEVELOPMENT

30. Three commenters suggest development of nutrient criteria beyond chlorophyll a for water quality standards.

Response: The Department recently revised the Nutrient Criteria Implementation Plan in December 2021. The revisions reflect the Department’s current priorities for development of nutrient criteria for waterbodies that typically have the highest risk for nutrient over-enrichment, which based on our findings are tributary embayments of lakes/reservoirs and coastal/estuarine

waters. In addition, the development of numeric nutrient criteria for rivers and streams may be difficult to implement due to the varying ecology and topography within Alabama; therefore, the Department is also investigating the option of adopting additional narrative criteria to more specifically address nutrients in rivers and streams.

The Department has had great success in addressing nutrient overenrichment throughout Alabama via the TMDL program. TMDLs have established limits/reductions for nutrients (i.e. total phosphorus) for both point and nonpoint sources to address nutrient impairments, and post TMDL follow-up monitoring has shown a significant reduction in nutrient loadings and corresponding improvements in various response parameters such as chlorophyll-a (algae), dissolved oxygen, pH, fish and macroinvertebrates. The Department has and will continue to use scientifically valid approaches to develop nutrient criteria that are protective of designated uses, implementable, and scientifically defensible.

GENERAL: STORMWATER RUNOFF

31. One commenter suggests that increases in stormwater runoff be regulated as an alteration of the physical characteristic of runoff water quality.

Response: Flow is not considered a pollutant under either the Federal Clean Water Act or Alabama's Water Pollution Control Act. In January 2013, a federal court ruled that the EPA cannot regulate stormwater flow in setting a total maximum daily load (TMDL) for impaired waters under the Clean Water Act (CWA) because stormwater runoff is not considered a pollutant. The court found that EPA could only issue TMDLs for actual pollutants. (Virginia Department of Transportation, et al. v. United States Environmental Protection Agency, Et al. U.S. District Court for the Eastern District of Virginia. 3 Jan. 2013. Print.) In conclusion, the court reiterated that the "language of 33 U.S.C. § 1313(d)(1)(c) is clear." *Id.* The Clean Water Act (CWA) authorizes EPA "to set TMDLs to regulate pollutants, and pollutants are carefully defined." *Id.* Because stormwater runoff (flow) is not a pollutant, "EPA is not authorized to regulate it via TMDL." *Id.*

GENERAL: TMDLs

32. Two commenters suggest TMDL development for waters impaired by mercury.

Response: The Department has plans to develop a statewide mercury TMDL. The Water Quality Branch has prioritized the assessment of the data that is currently available and will evaluate the best approach to addressing mercury on a statewide level. A timeframe for the establishment of this TMDL will be determined once the data assessment is complete and an effective approach for TMDL development has been determined.

Other Comments Submitted During the Comment Period

The Department received a number of other comments during the 2021 triennial review comment period that did not pertain to provisions in ADEM Administrative Code r. 335-6-10 or 335-6-11. Many of these comments expressed concerns with provisions in other chapters of the Department's administrative code and will be provided to the appropriate program managers. A few comments were submitted which addressed the Department's Water Quality Assessment and Listing Methodology. These comments will be considered as a part of future revisions to the methodology.

Several commenters expressed a desire for the Department to respond to comments submitted during previous triennial review periods. While the Department appreciates these comments and has considered many of them, it is beyond the Department's resources to provide specific responses to comments submitted prior to the 2021 triennial review.

The Department appreciates the time and effort of all the individuals and organizations that have participated in the 2021-2023 triennial review, with the goal of improving water quality in Alabama. These comments have been made a part of the hearing record, which will be provided to EPA Region 4 and made available on ADEM's webpage.